



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAR 1 4 2006

Burt Okihara

Kailua, HI 96734

RE: MUR 5571

Dear Mr. Okihara:

On March 7, 2006, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR 5571

RESPONDENT: Burt Okihara

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

Dalton Tanonaka was a 2004 candidate for Congress in Hawaii's 1st Congressional District. Tanonaka made a loan of \$11,000 to his campaign committee, Tanonaka for Congress ("TFC"), in October 2004. Federal prosecutors in Hawaii investigated this loan, concluding that the loan came not from Tanonaka's personal funds but instead from a \$25,000 loan he had obtained from Burt Okihara. According to Tanonaka's criminal plea agreement, in October 2004 Tanonaka solicited \$25,000 from "BO" because it was "'crunch time' in the Congressional election" and "he needed the money for personal and campaign expenses." From news reports, it appears that "BO" refers to Tanonaka's brother-in-law Burt Okihara, who is married to Tanonaka's sister, Sandra Okihara. July 22, 2005 HONOLULU ADVERTISER article. On October 8, 2004, "BO" purchased a \$25,000 cashier's check made payable to Tanonaka. That same day, Tanonaka deposited the check into his personal checking account and then transferred \$11,000 from this account into TFC's bank account. Prior to these transactions, the balance in Tanonaka's personal bank account was \$34.64 and the balance on TFC's bank account was \$3,179.20

Tanonaka admitted in his plea agreement that his brother-in-law Burt Okihara loaned him the money that he transferred to his campaign. A contribution includes a gift or loan made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). In 2004,

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1 the Act prohibited contributions to any candidate and his or her authorized political committee
2 with respect to any election for federal office that exceeded \$2,000. 2 U.S.C. §§ 441a(a)(1)(A)
3 (2004). This contribution limit also applies to family members of a candidate. *Buckley v. Valeo*,
4 424 U.S. 1, 51 (1976). Therefore, there is reason to believe that Burt Okihara made an excessive
5 contribution to TFC in violation of 2 U.S.C. § 441a(a)(1)(A).

6 The amount of the excessive contribution may include the portion of the \$25,000 loan
7 that Tanonaka used for personal expenses during his candidacy as well as the portion he
8 transferred directly to the campaign. The Commission's personal use regulations provide that a
9 third party's payment of a candidate's personal expenses during the campaign is a contribution
10 unless the payment "would have been made irrespective of the candidacy," for example if the
11 third party had made such payments before the candidacy. 11 C.F.R. § 113.1(g)(6)(iii).
12 Absent evidence of such previous payments, the amounts used for Tanonaka's personal expenses
13 would also represent an excessive contribution.